



STATE OF NEW JERSEY

In the Matter of Keith Kolensky,
Communications Systems Technician
2 (PS4562P), Department of Law and
Public Safety

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

List Revival

CSC Docket No. 2021-408

ISSUED: JULY 2, 2021 (JET)

Keith Kolensky requests revival of the promotional list for Communications Systems Technician 2 (PS4562P),¹ Department of Law and Public Safety, in order to effectuate his permanent appointment.

By way of background, in September 2019, Kolensky, who was serving as a Communications Systems Technician 1, submitted a classification reevaluation request to the Division of Agency Services (Agency Services), which requested a reclassification the title of Communications Systems Technician 2. Agency Services issued a June 11, 2020 classification determination indicating that the appropriate classification of Kolensky’s title was Communications Systems Technician 2. However, due to the COVID-19 Pandemic, the June 11, 2020 classification determination was issued indicating the wrong address, as it did not include Kolensky’s home address. Official personnel records reflect that Kolensky was appointed as a provisional Communications Systems Technician 2, effective October 12, 2019.

Records reflect that Kolensky applied for the PS4562P promotional examination by the March 1, 2017 closing date, and he listed Camden County as his preferred work location. Two certifications were issued (July 31, 2017 - PS171282) and (June 26, 2020 - PS200437), both for positions in Mercer County, and three appointments were made. Kolensky’s name did not appear on the certifications. In this regard, since Kolensky marked that Camden County was his preferred work

¹ It is noted that the subject list expired on July 26, 2020.

location, his name did not appear on the certifications. As such, Kolensky could not be appointed to the subject positions since his name did not appear on the certifications.

In the instant matter, Kolensky requests to revive the eligible list. He states that, although he was provisionally appointed to the subject title, his permanent appointment cannot be effectuated since his name did not appear on the certification. Kolensky argues that he listed Mercer County on the application as his preferred work location, and he has never worked in Camden County in his career.² In addition, Kolensky contends that an employee with less seniority³ appeared on the PS200437 certification and was permanently appointed as a Communications Systems Technician 2, which is unfair since the employee filed a request for a reclassification evaluation after him. Moreover, Kolensky states that he did not file the instant request until October 2020 because he did not find out about the appointment of the less senior employee until September 28, 2020, and he did not receive any notification to apply for the subject position.⁴

The appointing authority states that it is in support of Kolensky's request to amend the work location to Mercer County as that is the location where he is currently serving. The appointing authority confirms that Camden County was not certified as a work location, and as a result of the error, Kolensky's name could not have been certified and his permanent appointment could not be effectuated. As such, the appointing authority contends it is necessary to revive the list in order to effectuate Kolensky's permanent appointment. It is noted that the appointing authority indicated that it was in support of the request to revive the list after the July 26, 2020 expiration date of the subject list. Agency Services confirms that there are no active promotional lists for Communications Systems Technician 2 for the Department of Law and Public Safety nor is there a pending promotional announcement.

CONCLUSION

N.J.A.C. 4A:4-3.4(a) provides that an eligible list may be revived under the following circumstances:

² A review of Kolensky's application for the subject examination indicates that he, in fact, listed Camden County as his preferred work location.

³ It is noted that Kolensky does not name the employee on appeal. However, he states via e-mails to the appointing authority that David Gallagher was permanently appointed to the subject title. Records reflect that Gallagher is listed as "retained, interested others appointed" on the PS200437 certification, and, as such, he was not appointed from the list. Records also reflect that Gallagher is serving as a provisional Communications Systems Technician 2.

⁴ The record reflects that Kolensky did not file the instant request until October 2020, which is three months after the expiration date of the subject list. It also appears that Kolensky is arguing that he did not timely file the instant matter due to the delays caused by the incorrect address listed on his June 11, 2020 classification determination.

1. To implement a court order, in a suit filed prior to the expiration of the list;
2. To implement an order of the Civil Service Commission in an appeal or proceeding instituted during the life of the list;
3. To correct an administrative error;
4. To effect the appointment of an eligible whose working test period was terminated by a layoff; or
5. For other good cause.

N.J.A.C. 4A:4-2.1(f) provides that an application may only be amended prior to the announced closing date. *N.J.A.C.* 4A:1-1.2(c) states that the Civil Service Commission (Commission) may relax a rule for good cause in order to effectuate the purposes of Title 11A, New Jersey Statutes.

Initially, Kolensky's arguments pertaining to the wrong address appearing on the classification determination are of no moment. Kolensky did not show in this matter that the incorrect address resulted in the delays that he now attributes to the error. In this regard, despite the incorrect address listed on the June 11, 2020 classification determination, Kolensky was provisionally appointed to the subject title, retroactive to October 2019. Additionally, the record reflects that Kolensky timely filed for the subject examination by the March 1, 2017 closing date. However, even if Kolensky did not immediately receive the June 11, 2020 classification determination, since he was provisionally appointed to the subject title, there is no substantive evidence in this matter to show that the error resulted in any adverse circumstances toward him. Rather, as will be discussed more fully below, Kolensky's name did not appear on the PS200437 certification because he listed his preferred work location on the application for the subject examination as Camden County.

With respect to the timeliness of the appeal, the subject list expired in July 2020 and Kolensky did not file the request to revive the list in the instant matter until October 2020. As such, Kolensky's request in this matter is untimely, as it was not filed with this agency until three months after the subject list expired. Nonetheless, as will be discussed more fully below, the Commission will accept the appeal as timely. The record reflects that Kolensky timely applied for the subject examination by the March 1, 2017 closing date, and was provisionally appointed to the subject position, retroactive to October 2019. As such, he should have been aware that, as a result of the June 11, 2020, classification determination, he was provisionally appointed as a Communications Systems Technician 2. However, the record reflects that the June 26, 2020 PS200437 certification was issued only two weeks after the June 11, 2020 classification determination was issued. As such, it is plausible that, based on the dates that the June 11, 2020 classification was issued and the June 26, 2020 certification was issued, that Kolensky was unaware that he was not certified on the PS200437 list. Additionally, the record reflects that an eligible was appointed from the PS200437 in August 2020. As such, since the

appointment was made in August 2020, and based on Kolensky's arguments that he was unaware that an appointment was made from the PS200437 list until September 2020, it is plausible that he was unaware that a candidate was appointed from the certification until September 2020. As such, it is reasonable that Kolensky would not have submitted the instant request in this matter until October 2020. Accordingly, based on the unique circumstances noted above, the Commission accepts the instant request as timely.

In this matter, Kolensky requests that the subject eligible list be revived in order to effectuate his permanent appointment, and the appointing authority is in support of the request. Although Kolensky argues that he did not list Camden County on the application for the subject examination, a review of his application for the subject examination clearly shows that he listed Camden County as his preferred work location. Since the appointing authority did not certify to Camden County as a work location, Kolensky's name could not have appeared on the PS200437 certification. Nonetheless, the appointing authority confirms that Kolensky should have listed Mercer County on the application, since that is where he was serving at the time he completed the application and continues to serve as a result of his provisional appointment. In addition, Agency Services states there are no active promotional lists or a pending promotional announcement for the subject title. The Commission notes that the filling of vacancies through permanent appointments from an active eligible list is preferable to provisional appointments. Under these circumstances, good cause exists to relax the provisions of *N.J.A.C. 4A:4-2.1(f)* and amend Kolensky's application to indicate Mercer County as his preferred work location. Accordingly, based on the unique circumstances of this matter, the Commission finds that good cause has been presented under *N.J.A.C. 4A:4-3.4(a)*⁵ to revive the eligible list for Communication Systems Technician 2 (PS4562P) and record the permanent appointment of Keith Kolensky, effective August 24, 2020,⁵ pending the completion of a current working test period.

One final matter warrants comment. The petitioner is advised that he is to list the appropriate preferred work location on the subject application on any future promotional applications that he submits to this agency.

This decision is based on the unique circumstances presented in this matter and will not be considered as precedent in any other matter.

ORDER

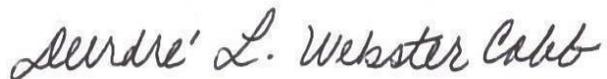
Therefore, it is ordered that this request be granted, and the eligible list for Communications Systems Technician 2 (PS4562P), Department of Law and Public Safety, be revived and Keith Kolensky's permanent appointment to Communications

⁵ This is the date of the permanent appointment of the other eligible on that certification.

Systems Technician 2 from the PS4562P list be recorded, effective August 24, 2020, pending completion of a current working test period.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 30TH DAY OF JUNE, 2021



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